BLANK

PAGE

LIBRARY

Office-Supreme Court, U.S.
FILED
SEP 29 1966
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 505

IN THE MATTER OF APPORTIONMENT OF THE MICHIGAN LEGISLATURE

MAXWELL F. BADGLEY, et al.,
Appellants,
v.
SECRETARY OF STATE JAMES M. HARE, and AUGUST SCHOLLE, et al.,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF MICHIGAN

MOTION OF INTERVENORS-APPELLEES TO DISMISS OR AFFIRM

THEODORE SACHS,
Attorney for August Scholle, et al.,
Intervening Defendants-Appellees,
3610 Cadillac Tower,
Detroit, Michigan 48226.

Interstate Brief & Record Co., 356 Congress St. E., Detroit, Michigan 48226

BLANK

PAGE

SUBJECT INDEX

	Page
Motion of Intervenors-Appellees to Dismiss or Affirm:	
Motion to Dismiss or Affirm	1
Statement	2
Argument	5
There is no substantial federal question	5
Introduction	5
1. There was no Fourteenth Amendment violation by alleged gerrymander	6
a. Law	6
b. Findings	7
c. Conclusion	10
2. There was no Fourteenth Amendment violation by alleged "fragmentation of natural political groupings and communities of interest"	11
3. There was no "excessive" population standard below	12
4. There was no improper rejection of proof	13
5. The judgment below was admittedly final	14
Conclusion	15
Appendix A—Michigan Constitution of 1963, Art. IV	1b

CITATIONS

Cases:	Page
Baker v. Carr, 369 U.S. 186 (1962)	10
Burns v. Richardson, 384 U.S. 73 (1966)	7, 11
Bush v. Martin, 251 F. Supp. 484 (D.C., Tex., 1966)	6, 10
Fortson v. Dorsey, 379 U.S. 433 (1964)	6, 7
Forty-Fourth General Assembly of Colorado v. Lucas, 379 U.S. 693 (1965)	12
Giddings v. Secretary of State, 93 Mich. 1, 52 N.W. 944 (1892)	13
In Re Apportionment of State Legislature—1964, 373 Mich. 250, 128 N.W. 2d 722 (1964)	3, 7, 13
Kilgarlin v. Martin, 252 F. Supp. 404 (D.C., Tex., 1966)	6
Marshall v. Hare, 378 U.S. 561 (1964)	2, 3n., 5, 12, 15
Presque Isle Township District v. County Board, 364 Mich. 605, 111 N.W. 2d 853 (1961)	13
Reynolds v. Sims, 377 U.S. 533 (1964)	3n., 10, 11, 15
Scholle v. Hare, 360 Mich. 1, 104 N.W. 2d 63 (1960), vac'd and rem'd 369 U.S. 429 (1962), judgment for plaintiff, 367 Mich. 176, 116 N.W. 2d 350 (1962), cert. den., sub. nom. Beadle v. Scholle, 377 U.S. 990 (1964)	2n., 5
Sims v. Baggett, 247 F. Supp. 96 (D.C., Ala., 1965)	6
State v. California Co., 79 N.D. 430, 56 N.W. 2d 762 (1953)	13
WMCA Inc. v. Lomenzo, 238 F. Supp. 916, aff'd 382 U.S. 4 (1965)	6, 7
Yancey v. Faubus, 251 F. Supp. 998 (E.D., Ark., 1965), aff'd. sub. nom., Crawford County Bar Association v. Faubus, 383 U.S. 271 (1966)	9n.

Constitutional Provisions and Statutes:

	Page
Michigan Constitution of 1963, Article IV, sec. 6,	
¶ 1st	10
¶ 6th	13n.
¶ 7th	3, 3n.
¶ 8th	4, 4n.

Miscellaneous:

Congressional Record, p. 27202 (Oct. 22, 1965)	5n.
Detroit News, February 6, 1964	9n.
McKay, Reapportionment: The Law and Politics of Equal Representation (Twentieth Century Fund, 1965)	9, 9n.

BLANK

PAGE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 505

IN THE MATTER OF APPORTIONMENT OF THE MICHIGAN LEGISLATURE

MAXWELL F. BADGLEY, et al.,
Appellants,
v.
SECRETARY OF STATE JAMES M. HARE, and AUGUST SCHOLLE, et al.,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF MICHIGAN

MOTION OF INTERVENORS-APPELLEES TO DISMISS OR AFFIRM

MOTION TO DISMISS OR AFFIRM

Intervening defendants-appellees, August Scholle, et al., pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, move that the appeal herein

be dismissed, or that the final judgment of the Michigan Supreme Court, dated April 6, 1966, be affirmed, for the reasons that said judgment was correct, appellants fail to present a substantial federal question and said judgment rests on an adequate non-federal basis.

STATEMENT

On June 22, 1964, this Court reversed the decision of *Marshall v. Hare,* 227 F. Supp. 989 (E. D., Mich.), which had upheld (2-1) the legislative apportionment provisions of Michigan's 1963 Constitution.[1] 378 U.S. 561. In that case, these intervenors were plaintiffs.[2]

In reversing, this Court remanded to the three-judge district court, stating:

> "The judgment below is reversed. *Reynolds v. Sims,* 377 U.S. 533, *Lucas v. Forty-Fourth General Assembly of Colorado,* 377 U.S. 713. The case is remanded for further proceedings consistent with the views stated in our opinions in *Reynolds v. Sims* and in the other cases relating to state legislative apportionment decided along with *Reynolds.*"

The District Court thereafter stayed its hand in view of superseding events in the Michigan Supreme Court.

On June 22, 1964, upon this Court's reversal of *Marshall,* the Michigan Supreme Court, pursuant to Michigan Con-

---

[1] These provisions are set forth in Appendix A, hereto attached.

[2] Intervenor Scholle was also the plaintiff in the earlier suit of *Scholle v. Hare,* 360 Mich. 1, 104 NW 2d 63 (1960), vacated and remanded, 369 U. S. 429 (1962), judgment for plaintiff, 367 Mich. 176, 116 NW 2d 350 (1962), cert. den. sub. nom., *Beadle v. Scholle,* 377 U S. 990 (1964).

stitution of 1963, Article IV, sec. 6, ¶7th,[3] directed Michigan's deadlocked Legislative Apportionment Commission to adopt the so-called Alternate Austin-Kleiner Plan as being that "plan [before the Court which] complie[d] most accurately with the constitutional requirements." In re Apportionment of State Legislature-1964, 373 Mich. 250, 128 N.W. 2d 722 (1964).[4]

---

[3] "If a majority of the commission cannot agree on a plan, each member of the commission, individually or jointly with other members, may submit a proposed plan to the supreme court. The supreme court shall determine which plan complies most accurately with the constitutional requirements and shall direct that it be adopted by the commission and published as provided in this section."

[4] The Commission had been reconvened, after *Reynolds v. Sims*, by Michigan Supreme Court orders of June 17, 373 Mich 247, 128 N.W. 2d 721, vacating an earlier, provisional districting (necessarily invalid under *Reynolds*, as later so determined by *Marshall*) and directing the Commission to adopt a plan satisfying *Reynolds*. The Commission deadlocked.

As to the appellant's comments respecting the shortness of time for Commission deliberations:

> "While the practical facts of the then existing election process timetable required prompt action by this Court and by the commission following the long awaited decisions of the United States Supreme Court in *Reynolds v. Sims*, and its accompanying cases, I agree with Justice Smith that it is something less than candor to plant a due process argument [abandoned on this appeal] on the assertion that only five days elapsed between *Reynolds v. Sims* and the decision by this Court ordering commission approval of the alternate Austin-Kleiner plan. Justice Smith in November accurately stated the facts that the commission had before it for many months before *Reynolds v. Sims* reapportionment plans based upon districts of equal population, that extended hearings lasting two full days before this Court explored population criteria for reapportionment purposes, *and that a representation was made to this Court that the commission could furnish other population based plans in 24 hours if desired.* 376 Mich. 410, 479, 480." Mr. Justice Souris, below, 377 Mich. 396, 447, 140 NW 2d 436, 455, 456 (1966). (Emphasis added).

No appeal was taken from such judgment, nor was stay sought, and the 1964 legislative elections were conducted in the Austin-Kleiner districts, and the 1965-1966 legislature so served.

In August, 1964, this action was filed in the Michigan Supreme Court, pursuant to Art. IV, Sec. 6, ¶8th, of the Michigan Constitution of 1963,[5] challenging the validity of that plan. The material allegations were controverted. After extensive arguments and briefs, after an interim order (5-3) of November 2, 1965, which did not question the validity of the Austin-Kleiner Plan, but which directed the Commission to reconvene, and after subsequent Commission deadlock, a majority of the Court on April 6, 1966 reaffirmed the validity of the Austin-Kleiner Plan and dismissed appellants' complaint. Contrary to appellants, the Court did *not* deadlock, instead dividing 4-3[6] and *on state grounds only*. No judge below accepted appellants' federal constitution arguments.

This appeal followed.

---

[5] "Upon the application of any elector filed not later than 60 days after final publication of the plan, the supreme court, in the exercise of original jurisdiction, shall direct the secretary of state or the commission to perform their duties, may review any final plan adopted by the commission, and shall remand such plan to the commission for further action if it fails to comply with the requirements of this constitution."

[6] Mr. Justice Black expressly abstained from decision, 377 Mich. 396, 416, 140 NW 2d 436, 441, but dissented from the order of dismissal. 377 Mich. 396, 474, 140 NW 2d 436, 468.

ARGUMENT

There Is No Substantial Federal Question

Introduction

In earlier years, these intervenors, as plaintiffs, challenged Michigan's 1952 Constitution districts, *Scholle v. Hare,* 360 Mich. 1, 104 N.W. 2d 63 (1960), vacated and remanded, 369 U.S. 429 (1962), judgment for plaintiff, 367 Mich. 176, 116 N.W. 2d 350 (1962), cert. den. *sub. nom., Beadle v. Scholle,* 377 U.S. 990 (1964), and thereafter, Michigan's 1963 Constitution provisions, *Marshall v. Hare,* 227 F. Supp. 989 (E.D., Mich., 1964), rev'd and rem'd., 378 U.S. 561 (1964). Michigan finally, having achieved by the plan in issue the closest approximation to "one-man, one-vote" in the nation,[7] appellants, who have heretofore openly opposed the equal population concept, would now obliquely deny its application.

Appellants cite five alleged grounds for invoking this Court's jurisdiction. On the contrary, these grounds raise no substantial federal question.

---

[7] *Congressional Record,* p. 27202 (October 22, 1965). The maximum district population disparities are 1.01:1 in the Senate, 1.17:1 in the House. Minimum electoral control in each house is 52.0%.

1. There Was No Fourteenth Amendment Violation by Alleged Gerrymander.

a. Law.

Does an allegation of politically-shaped legislative districts state a federal claim?

This Court has declined to so hold.

In *WMCA, Inc. v. Lomenzo,* 238 F. Supp. 916, allegations and arguments identical to those herein made by appellants were presented to the three-judge district court. Indeed, the partisan bias in the districts in question was almost acknowledged by the defendants. The District Court dismissed, concluding that political gerrymandering does not state a Fourteenth Amendment cause of action. This Court affirmed. *WMCA, Inc. v. Lomenzo,* 382 U.S. 4 (1965). Mr. Justice Harlan's concurring opinion recited that the District Court "rejected contentions that • • • partisan 'gerrymandering' may be subject to federal constitutional attack under the Fourteenth Amendment. In affirming this decision this Court necessarily affirms these • • • eminently correct principles." 382 U.S. 4, 6.

Subsequently, citing *WMCA, inter alia,* the courts in *Bush v. Martin,* 251 F. Supp. 484 (D.C., Tex., 1966) (3-judge); *Kilgarlin v. Martin,* 252 F. Supp. 404, 432-434 (D.C., Tex., 1966) (3-judge); and *Sims v. Baggett,* 247 F. Supp. 96, 104, 105 (D.C. Ala., 1965) (3-judge) (on remand of *Reynolds*), rejected like arguments, that alleged partisan gerrymandering stated a federal cause of action. So did *all* judges below in the instant cause. No court has held to the contrary.

While appellants concede *Fortson v. Dorsey,* 379 U.S. 433, 439 (1964), to be of "another context", concerning the

validity of multi-member districts, and not involving alleged "partisan political gerrymandering in the formation of boundary lines of single-member districts" (Jurisdictional Statement, p. 20), they strangely would find comfort in *Burns v. Richardson,* 384 U.S. 73, 89 (1966), which, citing *Fortson* at 384 U.S., at 88, merely uses like language. For *Burns* is precisely of the same genre as *Fortson,* similarly involves multi-member districting, and in pertinent part concerns this Court's rejection of the District Judge's disapproval, as a matter of constitutional preference, for single-member over multi-member districts. Rather than enumerating new doctrine on this point in *Burns,* this Court merely repeated the formulation of *Fortson* (which of course had intedated *WMCA* and which was in fact cited by the affirmed lower court in the latter case as "mak[ing] it is clear that the Supreme Court * * * has refrained from condemning partisan gerrymandering as unconstitutional." 238 F. Supp. 916, 926).

b. Findings

Not only were appellants' constitutional arguments rejected, but so also were their factual conclusions. The Michigan Supreme Court, in its initial 1964 opinion, found that, "Subject to this controlling objective of substantial equal population, and to the extent it would not be subordinated, districts by such plan are formed as compact, contiguous and regular in shape, and do follow county, city, and township boundaries as nearly as practicable.[8] 373 Mich. 250, 254, 128 N.W. 2d 722, 723 (1964). A continuing

[8] Necessarily, some boundary lines were breached, 18 out of the State's 83 counties' lines in the Senate and 32 in the House." 377 Mich. 396, 450, 140 NW 2d 436, 457.

majority has again so found. 377 Mich. 396, 446, 449, 453, 471, 474, 140 N.W. 2d 436, 455, 456, 458, 467, 468.

A disinterested scholar has agreed:

> "Until 1964 the Upper Peninsula of Michigan, separated by water from the principal part of the state, had long been specially favored in terms of congressional representation and in terms of representation in the state legislature. The combined population of the eleventh and twelfth congressional districts (the Upper Peninsula plus nine Lower Peninsula Counties) was almost exactly equal in 1960 to the median district size for all 19 of the congressional districts in Michigan. In the state legislature the favoritism in behalf of the Upper Peninsula counties was even more marked, both before and after the effective date of the 1963 state constitution. Remarkably enough, the reapportionment which became effective in 1964 eliminated the disparities almost completely. The population of the 38 senatorial districts varied only from 205,118 to 207,094, while in the house the range was from 69,118 to 72,200. In both cases county lines were followed to the extent possible (in the senate apportionment only one Upper Peninsula county was divided); but of course it was sometimes necessary to cross county lines in order to avoid substantial continuing population differentials among the districts. Where it was thought essential to divide counties, the lines were drawn almost entirely along city and township lines, thus avoiding the division of an essentially unitary community between two or more districts. Perhaps the most unusual is senate district number 39, which consists of Flint City plus a portion of adjoining Genesee Township, the whole carved right out of the center of Genesee County [in fact substantially the same as in the Republican Commissioners' plan it succeeded]. The logic is ap-

> parent; the metropolitan center of the county may well have interests in part distinct from the surrounding countryside. Michigan has demonstrated that equality is possible where it had long been thought least likely to be attained." McKay, "Reapportionment: The Law and Politics of Equal Representation", pp. 237, 238 (The Twentieth Century Fund, N.Y., 1965.)

Finally, that appellants can devise alternative plans which equally satisfy constitutional requirements is irrelevant if the plan in fact adopted is proper.[9] Indeed, if appellants' maps (Jurisdictional Statement, p. 23) demonstrate anything, it is a distinction without a difference—unless it is their own Map II's unnecessary "fragmentation of natural political groupings and communities of interest", for example, of the natural, cohesive, Bay City-Saginaw metropolitan area (District 34),[10] or of the western

---

[9] As stated in *Yancey v. Faubus*, 251 F. Supp. 998 (E.D., Ark., 1965), aff'd per curiam, *sub. nom., Crawford County Bar Association v. Faubus*, 383 U.S. 271 (1966):

> "At the outset of discussion we will say that it is not our function to effect revisions of the plan when such revisions are unnecessary to satisfy constitutional requirements. We further recognize that the question is not whether the plan adopted by the Board is the best that could be devised. There are indeed instances of where a district is not comprised of the most compatible counties, based on their diverse geographic and political compositions. In fact it defies imagination to contrive a scheme that would meet with everyone's satisfaction." At 1001.

[10] Under the heading "New Metropolitan Area For Michigan", the Detroit News for February 6, 1964 stated:

> "Bay City sends several thousand workers to Midland and Saginaw, and Saginaw exports other thousands to Midland and Bay City. With little or no planning from the top, the area's three principal cities—Bay City, Midland and Saginaw, have grown into a three county metropolitan area whose problems are demanding area-wide solutions."

And *cf., McKay, supra.*

Michigan district (No. 33) which, but for current necessary population modifications, was similar to a district which had appeared in every Michigan apportionment since 1895.

c. Conclusion

Undoubtedly, in rejecting gerrymander constitutional arguments, all courts have been mindful of the manifest complexities of fashioning district boundaries, cf., Frankfurter, J., dissenting, *Baker v. Carr,* 369 U.S. 186, 323, and Harlan, J., dissenting *Reynolds v. Sims,* 377 U.S. 533, 621, 622, and the consequent lack of "judicially discoverable and manageable standards," *Bush v. Martin,* 251 F. Supp. 484, 520 (D.C., Tex., 1966) (3-judge court), in a process inevitably having political consequences. The point is especially meaningful in the case at bar where the Michigan Constitution—primarily authored by appellants' political party including five of these appellants as convention delegates, and thereafter approved by the electorate—deliberately reposed the apportionment task in a bipartisan commission, selected directly by the respective political parties. Michigan Constitution, 1963, Art. IV, Sec. 6, ¶1st.

Surely, subject to population standards, the fashioning of district configurations, with the necessary discretion to do so, remains the clearest of state and legislative prerogatives.

2. There was no Fourteenth Amendment Violation by Alleged "Fragmentation of Natural Political Groupings and Communities of Interest"

Appellants postulate a second supposed constitutional right, the alleged freedom (personal?) from "deliberate fragmentation of natural political groupings and communities of interest", citing in support the "fair and effective representation" language of *Reynolds*.

Even if such "groupings" or "communities" were judicially identifiable, such an argument harks back to that which *Reynolds* repudiated, for, "neither history alone, nor economic or other sorts of group interests, are permissible factors in attempting to justify disparities from population-based representation. Citizens, not history or economic interests, cast votes." Reynolds, 377 U.S. 533, 579, 580. The "fair and effective representation" to which this Court alluded in *Reynolds* was that of population-based representation, not its antithesis:

> "But if, even as a result of a clearly rational state policy of according some legislative representation to political subdivisions, population is submerged as the controlling consideration in the apportionment of seats in the particular legislative body, then the right of all of the State's citizens to cast an *effective and adequately weighted vote* would be unconstitutionally impaired." At 581 (Emphasis added.)

Surely, the configurations of legislative districts, otherwise satisfying population standards as nearly as practicable, are within the exclusive legislative judgment of each state. Cf. *Burns v. Richardson*, 384 U.S. 73, 89 (1965). Legislative apportionment remains "primarily a matter for legislative consideration and determination", *Reynolds*, 377 U.S., at 586.

And the constitutional standard is not what is best, but what is permissible.[11]

3. There was no "Excessive" Population Standard Below.

The gravamen of appellants' third issue is, in the phrase of Mr. Justice Souris below, that Austin-Kleiner renders equality too equally. 377 Mich. 396, 450, 140 N.W. 2d 436, 457.

The argument, erroneously postulating the Michigan Court's excessive subordination of allegedly surviving state standards to an exclusive population standard, is without merit:

(1) That the resultant plan more closely approximates theoretical equality than any other in the nation hardly bespeaks its infirmity.

(2) To apply the standards appellants urge is in part to relitigate *Marshall v. Hare,* which necessarily invalidated much of what appellants would enforce and is *res judicata* thereof.

(3) The argument is of a straw man variety and academic. For a majority of the Michigan Court never *held* what appellants claim, and moreover *found* what appellants will not admit. From the start, recognizing the *Reynolds* test as "population as nearly as practicable", 373 Mich. 250, a majority also found that whether or not the alleged state standards survive, or are inseparably related to provisions clearly stricken by *Marshall*—such separability itself being a state issue, *Forty-Fourth General Assembly of Colorado v. Lucas,* 379 U.S. 693 (1965)—, "Subject to this controlling objective of substantially equal

---

[11] See note 9, above.

population, and to the extent it would not be subordinated, districts by such plan are formed as compact, contiguous, and regular in shape, and do follow county, city, and township boundaries as nearly as possible." 373 Mich. 250, 254, 128 N.W. 2d 722, 723. If, *arguendo*, the "state standards" survive, the Michigan Supreme Court has conclusively determined that they have been met. 377 Mich. 396, 448 ff. 453, 474, 140 N.W. 2d 436, 456, 458, 468.

There is nothing for federal review.

4. There Was No Improper Rejection of Proof.

Appellants claim a denial of due process in the Court's rejection of tendered "proof" respecting alleged gerrymandering and other matters.

Surely there is no right to present irrelevant or incompetent proofs. Since the "offer" related to a non-cognizable claim (issue I, *supra*); improperly proposed the testimony of individual lawmakers[12] as to their motivation in passing a law, *Presque Isle Township District v. County Board*, 364 Mich. 605, 111 N.W. 2d 853 (1961) (citing *State v. California Co.*, 79 N.D. 430, 56 N.W. 2d 762 (1953)), *Giddings v. Secretary of State*, 93 Mich. 1, 8, 52 N.W. 944, 947 (1892); and consisted "solely of conclusory allegations of suspicion and speculation supported only by reference to election results which, according to them, were achieved by the partisan gerrymandering by the alternate Austin-Kleiner Plan. * * * [and not] facts within their power to establish as distinguished from facts which they hoped to discover.", 377 Mich. 396, 446, 447, 453, 140 N.W.

[12] The legislative apportionment commissioners were unquestionably special legislators, whose product became law. Mich. Constitution, 1963, Art. IV, Sec. 6, ¶6th.

2d 436, 455, 458, there were adequate state grounds for the Court's rejection of the offer. It should further be added that the Court *did* have before it, as is not untypical in apportionment litigation, the official records of the Commission, together with the considerable matters of which the Court took judicial notice. 377 Mich. 396, 454, 140 N.W. 2d 436, 459.

5. The Judgment Below was Admittedly Final.

Appellants state that they pose a fifth issue, of an alleged denial of due process due to deadlock, "only against the possibility that this Court might be requested [by appellees] to hold" that there was no final judgment below from which appeal might be taken. We make no such argument, although we do dispute the characterization of the action below as a deadlock where, in fact, a majority of the Michigan Court found the appellants' position without merit (although an abstaining judge dissented from the order of dismissal).[13]

[13] See note 6, *supra*.

CONCLUSION

Appellants clearly present no substantial federal question warranting this Court's plenary consideration.

The political gerrymander argument was properly rejected in the findings and is opposed by law and policy. The argument against "fragmentation of political units and communities of interest" is an argument either to consider matters deemed impermissible by *Reynolds*, or which are in any event committed to exclusive legislative discretion. The argument that the Michigan Supreme Court excessively heeded the teachings of this Court by honoring a legislative plan of maximal equality (over allegedly surviving state standards) is frivolous on its face, runs counter to the controlling decision in *Marshall v. Hare*, invades an area of state law subject to final disposition by the Michigan Supreme Court, and is academic in view of the findings below. Finally, the argument alleging rejection of incompetent "proofs" is without merit.

The decision below was clearly correct. There is no substantial federal question, and this appeal should be dismissed or the judgment affirmed.

Respectfully submitted,

THEODORE SACHS,
Attorney for August Scholle, et al.,
Intervening defendants-appellees,
3610 Cadillac Tower,
Detroit, Michigan 48226.

Dated: September 28, 1966.

BLANK

PAGE

APPENDIX A

MICHIGAN CONSTITUTION, 1963

ARTICLE IV—Legislative Branch

Sec. 2. The senate shall consist of 38 members to be elected from single member districts at the same election as the governor for four-year terms concurrent with the term of office of the governor.

In districting the state for the purpose of electing senators after the official publication of the total population count of each federal decennial census, each county shall be assigned apportionment factors equal to the sum of its percentage of the state's population as shown by the last regular federal decennial census computed to the nearest one-one hundredth of one percent multiplied by four and its percentage of the state's land area computed to the nearest one-one hundredth of one percent.

In arranging the state into senatorial districts, the apportionment commission shall be governed by the following rules:

(1) Counties with 13 or more apportionment factors shall be entitled as a class to senators in the proportion that the total apportionment factors of such counties bear to the total apportionment factors of the state computed to the nearest whole number. After each such county has been allocated one senator, the remaining senators to which this class of counties is entitled shall be distributed among such counties by the method of equal proportions applied to the apportionment factors.

(2) Counties having less than 13 apportionment factors shall be entitled as a class to senators in the proportion that the total apportionment factors of such counties bear to the total apportionment factors of the state computed to the nearest whole number. Such counties shall thereafter be arranged into senatorial districts that are compact, con-

venient, and contiguous by land, as rectangular in shape as possible, and having as nearly as possible 13 apportionment factors, but in no event less than 10 or more than 16. Insofar as possible, existing senatorial districts at the time of reapportionment shall not be altered unless there is a failure to comply with the above standards.

(3) Counties entitled to two or more senators shall be divided into single member districts. The population of such districts shall be as nearly equal as possible but shall not be less than 75 percent nor more than 125 percent of a number determined by dividing the population of the county by the number of senators to which it is entitled. Each such district shall follow incorporated city or township boundary lines to the extent possible and shall be compact, contiguous, and as nearly uniform in shape as possible.

Sec. 3. The house of representatives shall consist of 110 members elected for two-year terms from single member districts apportioned on a basis of population as provided in this article. The districts shall consist of compact and convenient territory contiguous by land.

Each county which has a population of not less than seven-tenths of one percent of the population of the state shall constitute a separate representative area. Each county having less than seven-tenths of one percent of the population of the state shall be combined with another county or counties to form a representative area of not less than seven-tenths of one percent of the population of the state. Any county which is isolated under the initial allocation as provided in this section shall be joined with that contiguous representative area having the smallest percentage of the state's population. Each such representative area shall be entitled initially to one representative.

After the assignment of one representative to each of the representative areas, the remaining house seats shall be apportioned among the representative areas on the basis of population by the method of equal proportions.

Any county comprising a representative area entitled to two or more representatives shall be divided into single member representative districts as follows:

(1) The population of such districts shall be as nearly equal as possible but shall not be less than 75 percent nor more than 125 percent of a number determined by dividing the population of the representative area by the number of representatives to which it is entitled.

(2) Such single member districts shall follow city and township boundaries where applicable and shall be composed of compact and contiguous territory as nearly square in shape as possible.

Any representative area consisting of more than one county, entitled to more than one representative, shall be divided into single member districts as equal as possible in population, adhering to county lines.

Sec. 4. In counties having more than one representative or senatorial district, the territory in the same county annexed to or merged with a city between apportionments shall become a part of a continguous representative or senatorial district in the city with which it is combined, if provided by ordinance of the city. The district or districts with which the territory shall be combined shall be determined by such ordinance certified to the secretary of state. No such change in the boundaries of a representative or senatorial district shall have the effect of removing a legislator from office during his term.

Sec. 5. Island areas are considered to be contiguous by land to the county of which they are a part.

Sec. 6. A commission on legislative apportionment is hereby established consisting of eight electors, four of whom shall be selected by the state organizations of each of the two political parties whose candidates for governor received the highest vote at the last general election at which a governor was elected preceding each apportionment. If a candidate for governor of a third political party has received at such election more than 25 percent of such gubernatorial vote, the commission shall consist of 12 members, four of whom shall be selected by the state organization of the third political party. One resident of each of the following four regions shall be selected by each political

party organization: (1) the upper peninsula; (2) the northern part of the lower peninsula, north of a line drawn along the northern boundaries of the counties of Bay, Midland, Isabella, Mecosta, Newaygo and Oceana; (3) southwestern Michigan, those counties south of region (2) and west of a line drawn along the western boundaries of the counties of Bay, Saginaw, Shiawassee, Ingham, Jackson and Hillsdale; (4) southeastern Michigan, the remaining counties of the state.

No officers or employees of the federal, state or local governments, excepting notaries public and members of the armed forces reserve, shall be eligible for membership on the commission. Members of the commission shall not be eligible for election to the legislature until two years after the apportionment in which they participated becomes effective.

The commission shall be appointed immediately after the adoption of this constitution and whenever apportionment or districting of the legislature is required by the provisions of this constitution. Members of the commission shall hold office until each apportionment or districting plan becomes effective. Vacancies shall be filled in the same manner as for original appointment.

The secretary of state shall be secretary of the commission without vote, and in that capacity shall furnish, under the direction of the commission, all necessary technical services. The commission shall elect its own chairman, shall make its own rules of procedure, and shall receive compensation provided by law. The legislature shall appropriate funds to enable the commission to carry out its activities.

Within 30 days after the adoption of this constitution, and after the official total population count of each federal decennial census of the state and its political subdivisions is available, the secretary of state shall issue a call convening the commission not less than 30 nor more than 45 days thereafter. The commission shall complete its work within 180 days after all necessary census information is available. The commission shall proceed to district and appor-

tion the senate and house of representatives according to the provisions of this constitution. All final decisions shall require the concurrence of a majority of the members of the commission. The commission shall hold public hearings as may be provided by law.

Each final apportionment and districting plan shall be published as provided by law within 30 days from the date of its adoption and shall become law 60 days after publication. The secretary of state shall keep a public record of all the proceedings of the commission and shall be responsible for the publication and distribution of each plan.

If a majority of the commission cannot agree on a plan, each member of the commission, individually or jointly with other members, may submit a proposed plan to the supreme court. The supreme court shall determine which plan complies most accurately with the constitutional requirements and shall direct that it be adopted by the commission and published as provided in this section.

Upon the application of any elector filed not later than 60 days after final publication of the plan, the supreme court, in the exercise of original jurisdiction, shall direct the secretary of state or the commission to perform their duties, may review any final plan adopted by the commission, and shall remand such plan to the commission for further action if it fails to comply with the requirements of this constitution.